

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ALONSO CHAVEZ-GONZALEZ,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent.

CASE NO. 10CR1365-GPC  
Related Case: 12CV2737-GPC

**ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2255 AS  
SECOND OR SUCCESSIVE**

On December 26, 2013, Petitioner Alonso Chavez Gonzalez, proceeding *pro se*, filed a "Request for Early Deportation by a Foreign Born Prisoner Pursuant to 28 C.R.F. (sic) 1.3". The Court construes the request as a second or successive petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255 as Petitioner is challenging his sentence. See 28 U.S.C. § 2255.

**Discussion**

On October 7, 2010, Petitioner pleaded guilty to deported alien found in the United States in violation of 8 U.S.C. § 1326. (Dkt. Nos. 28, 30.) On December 13, 2010, Defendant was sentenced to a term of imprisonment of 77 months and a three-year term of supervised release. (Dkt. No. 36.) On January 11, 2012, the Ninth Circuit affirmed the conviction and sentence. (Dkt. No. 45.) On November 8, 2012, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255. (Dkt. No. 46.) On August 14, 2013, District Judge Irma E. Gonzalez denied the petition. (Dkt. No.

60.) On December 27, 2013, the matter was transferred to the undersigned judge.


Since Petitioner's prior petition was adjudicated on the merits and now seeks to present a claim that was not presented in the prior application, the instant petition is a "second or successive petition" for purposes of 28 U.S.C. § 2244(b). Before filing a successive petition, Petitioner must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. §§ 2255, 2244(b)(3). Section 2244 acts as a gatekeeping provision and imposes stringent restrictions on the filing of second or successive petitions. See Felker v. Turpin, 518 U.S. 651, 662-64 (1996). District courts cannot consider a successive petition until the appropriate court of appeals issues an order authorizing the district court to consider the application. See 28 U.S.C. § 2244(b)(3)(A). Here, Petitioner has failed to present any evidence that he was granted leave to file a second or successive § 2255 petition by the Ninth Circuit.

### Conclusion

For the reasons provided above, the Court DISMISSES the second or successive petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255 without prejudice subject to refiling if Petitioner obtains the necessary order from the Ninth Circuit.<sup>1</sup>

IT IS SO ORDERED.

DATED: January 3, 2014

  
HON. GONZALO P. CURIEL  
United States District Judge

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<sup>1</sup>The Court also notes that there may be a statute of limitations issue as there is a one-year statute of limitation for a § 2255 petition. See 28 U.S.C. § 2255(f).